

JUSTIN X. WANG (CSB #166183)
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Attorney for Plaintiff
 Baoying GUO

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

EMC

Baoying GUO

CV

08

Case No.:

3320

Plaintiff

COMPLAINT FOR WRIT IN THE
 NATURE OF MANDAMUS

vs.

MICHAEL CHERTOFF, Secretary of the
 Department of Homeland Security;
 ROBERT S. MUELLER, Director of Federal
 Bureau of Investigation

Defendants.

"Immigration Case"

Plaintiff Baoying GUO, by and through her undersigned attorney, sues Defendants and states as follows:

1. This action is brought against the Defendants to compel action on the Application for Naturalization, or Form N-400, by Plaintiff Baoying GUO, properly filed by the Plaintiff. The N-400 application remains within the jurisdiction of the Defendants, who have improperly withheld action on said application to Plaintiff's detriments.

PARTIES

2. Plaintiff Baoying GUO is a U.S. Permanent Resident. Her Form N-400, Application for Naturalization, was received by the U.S.C.I.S. on November 29, 2006 (**Exhibit 1: Receipt Notice and Fingerprint Notice**) and is seeking to become a U.S. Citizen.

3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (DHS), and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the DHS 8 U.S.C. 1103(a); 8 C.F.R. 2.1.

4. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI), the law enforcement agency that conducts security clearances for other U.S. government agencies, such as the Department of State. As will be shown, Defendant has failed to complete the security clearances on Plaintiff's case.

JURISDICTION

5. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*, and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

VENUE

6. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where the Plaintiff reside if no real property is involved in the action or where the action is pending.

EXHAUSTION OF REMEDIES

7. Plaintiff has exhausted her administrative remedies.

CAUSE OF ACTION

8. Plaintiff Baoying GUO is a U.S. Permanent Resident. Her Form N-400, Application for Naturalization, was received by the U.S.C.I.S. on November 29, 2006 and she had her fingerprint taken on December 21, 2006 (**Exhibit 1: Receipt Notice and Fingerprint Notice**). Plaintiff Baoying GUO's N-400 application has now remained pending for more than 19 months from the date of the filing.

9. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants unreasonably have delayed and have refused to adjudicate Plaintiff's N-400 application for more than 19 months from the date of filing, thereby depriving Plaintiff of the rights to the decision on her application within a reasonable time and the peace of mind to which Plaintiff is entitled.

10. Plaintiff has been damaged by the failure of Defendants to act in accord with their duties under the law.

(a) Plaintiff Baoying GUO has been damaged by simply being deprived of the

1 adjudication of her Application for Naturalization for more than 19 months.

2 Plaintiff has also been unable to pursue a future course of action in the United
3 States due to the pendency of her N-400 application.

4 (b) Plaintiff has also been damaged in that she cannot file any immigrant petition for
5 her family.

6 (c) Plaintiff has been further damaged in that she is unable to vote and unable to work
7 for any job that requires U.S. citizenship.

8 11 The Defendants, in violation of the Administrative Procedures Act and Mandamus Act, 5
9 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's N-
10 400 application and have failed to carry out the adjudicative functions delegated to them by law
11 with regard to Plaintiff's case.

12 **PRAYER**

13 12. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff
14 respectfully prays that the Defendants be cited to appear herein and that, upon due consideration,
15 the Court enter an order:

16 (a) requiring Defendant FBI to expeditiously complete Plaintiff Baoying GUO's Security
17 Check for her N-400 application, if her security check has not been completed;

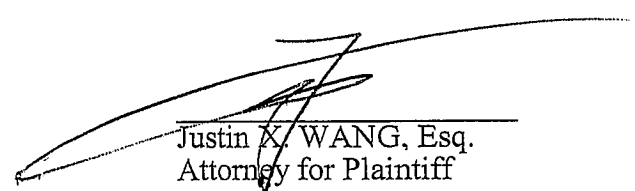
18 (b) requiring Defendant Chertoff to expeditiously process Plaintiff's N-400 Application
19 to conclusion;

20 (c) awarding Plaintiff reasonable attorney's fees under the Equal Access to Justice Act;
21 and

22 (d) granting such other relief at law and in equity as justice may require.

23 Dated: July 8, 2008

Respectfully submitted,


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25
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27 Justin X. WANG, Esq.
28 Attorney for Plaintiff

CERTIFICATION OF INTERESTED ENTITIES OR PERSON

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: July 8, 2008

Respectfully submitted,


Justin X. WANG, Esq.
Attorney for Plaintiff

LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	Receipt Notice and Fingerprint Notice

Ex. 1



Receipt			NOTICE DATE December 05, 2006
CASE TYPE N400 Application For Naturalization			USCIS A# A 079 523 550
APPLICATION NUMBER WSC*001634617	RECEIVED DATE November 29, 2006	PRIORITY DATE November 29, 2006	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS BAOYING GUO 1801 SHORELINE DRIVE 313 B ALAMEDA CA 94501		PAYMENT INFORMATION: Single Application Fee: \$400.00 Total Amount Received: \$400.00 Total Balance Due: \$0.00	
<p> </p> <p>The above application has been received by our office and is in process. Our records indicate your personal information is as follows:</p> <p>Date of Birth: June 23, 1971 Address Where You Live: 1801 SHORELINE DRIVE 313 B ALAMEDA CA 94501</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local USCIS office. You should expect to be notified within 460 days of this notice.</p>			
<p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit USCIS at www.uscis.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p>			
USCIS Office Address: U.S. CITIZENSHIP AND IMMIGRATION SERVICES CALIFORNIA SERVICE CENTER P.O BOX 10400 LAGUNA NIGUEL CA 92607-		USCIS Customer Service Number: (800) 375-5283	
WSC\$001745895		APPLICANT COPY	

Fingerprint Notification

NOTICE DATE

December 08, 2006

CASE TYPE

N400 Application For Naturalization

USCIS A#

A 079 523 550

APPLICATION NUMBER

WSC*001634617

RECEIVED DATE

November 29, 2006

PRIORITY DATE

November 29, 2006

PAGE

1 of 1

APPLICANT NAME AND MAILING ADDRESS

BAOYING GUO

1801 SHORELINE DRIVE

ALAMEDA CA 94501

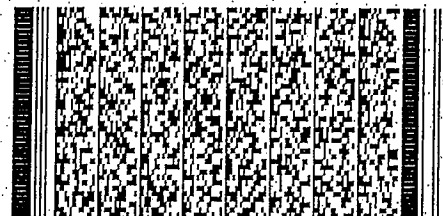
ASC SITE CODE:

BIOMETRICS QA REVIEW BY:

ON

TENPRINTS QA REVIEW BY:

ON



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To process your application, USCIS must take your fingerprints and have them cleared by the FBI. **PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.** If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. **RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.**

APPLICATION SUPPORT CENTER

CIS OAKLAND

2040 TELEGRAPH AVE.

OAKLAND CA 94612

DATE AND TIME OF APPOINTMENT

12/21/2006

03:00 PM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. **THIS APPOINTMENT NOTICE** and
2. **PHOTO IDENTIFICATION.** Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.

REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

USCIS cannot guarantee the day preferred, but will do so to the extent possible.

Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

CIS OAKLAND

2040 TELEGRAPH AVE.

OAKLAND CA 94612

If you have any questions regarding this notice, please call 1-800-375-5283.

APPLICANT COPY

APPLICATION NUMBER

WSC*001634617



WARNING!

Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.